REMARKS

Claims 1-24 and 26-28 are pending in the application.

Claim Rejections – 35 U.S.C. § 103(a)

The Patent Office rejected claims 1-4, 7-10, 22, 23 and 28 under 35 U.S.C. 103(a) as being unpatentable over Cluts, U.S. Patent No. 5,616,876 ("Cluts"), and the article entitled Jukeboxes, published by PC Magazine in 1999 ("PC Magazine").

Applicant respectfully traverses. The present application allows a user to classify content as desired by the user. Thus, a user himself or herself may create new classifications, or may create conventional classifications in which the content filling the conventional classifications is selected by the user, not a content industry group. For example, a user may create an exercise classification. The user may tag content that he or she believes is suitable for exercise sessions with an exercise classification. Content may be compiled which is based upon the exercise classification and is within a desired time period, for example one hour. The compilation of content may include content suitable for exercise as selected by the user of duration of one hour.

Applicant respectfully submits that claims 1, 7 and 22 include novel and nonobvious elements. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Ryoka*, 180 U.S.P.Q. 580 (C.C.P.A. 1974). *See also In re Wilson*, 165 U.S.P.Q. 494 (C.C.P.A. 1970).

Independent claims 1, 7 and 22 include elements that have not been disclosed, taught, or suggested by the combination of Cluts and PC Magazine. For instance, Cluts and PC Magazine do not disclose, teach or suggest means for receiving a criteria set including at least one user-defined classification. (Emphasis Added). The Patent Office points to a "more like" function of Cluts whereby a subscriber uses a seed song (media) to identify other songs (user-defined classification) that are similar to the seed song to

add new songs to a play list. (Office Action of December 8, 2004, Page 2). The Patent Office cites the abstract; Col. 2, lines 33-62; Col. 13, lines 63-67; Col. 14, lines 1-11; abd Col. 16, lines 54-62 of Cluts for support of its assertion.

Applicant respectfully submits Cluts fails to disclose, teach or suggest receiving a criteria set including at least one user-defined classification. In Cluts, the selection of a seed song is not equivalent to receiving a criteria set including at least one user-defined classification. In Cluts, the "more like" function allows a subscriber to locate additional songs on the basis of subjective decisions that have been made regarding the styles of the songs (decisions made by someone other than the user). (Clutz, Column 14, Lines 19-25). In fact, Cluts states "the "more like" functions must find songs that most subscribers would agree are "similar" to the seed song." Emphasis added. (Clutz, Column 14, Lines 25-27).

The system of Cluts may be analogized to going into a library in which books are organized according to their subject matter, locating a book, and then looking at the other books on the shelf beside the selected book (e.g., in the same subject matter classification) to find other books of the same subject matter. This action does not include a user-defined classification, rather the related books were based upon its "similar subjective" subject matter.

PC Magazine discloses a similar method of song selection, wherein a user may select songs by up to three general pre-determined classes, such as artist, tempo, genre, mood or situation. Pre-determined playlists or categories are well known in the art. An advantageous aspect of the present invention is a criteria set of desired media content including at least one user-defined classification for at least one piece of media content. Emphasis added. This limitation is not taught, suggested or disclosed in either Cluts or PC Magazine. Consequently, under *In re Ryoka*, a *prima facie* case of obviousness has not been established for claims 1, 7, 13 and 22. Claims 2-6, 8-12, 14-21 and 23-28 are believed allowable due to their dependence upon an allowable base claim.

Claim Rejections – 35 U.S.C. § 103(a)

The Patent Office rejected claims 5, 6, 11, 12, and 24, 26 and 27 under 35 U.S.C. 103(a) as being unpatentable over Cluts/PC Magazine and R.W. Picard (Article entitled Affective Wearables, published in 1997) ("Picard").

Applicant respectively traverses the rejection of claims 5, 6, 11, 12, 24-27 Since claims 3, 5, 6, depend from claim 1, claims 11, and 12 depend from claim 7, and claims 24-27 depend from claim 22, claims 5, 6, 11, 12, 24-27 are believed allowable.

Allowable Subject Matter

The Patent Office stated claims 13-21 are allowed.

Thank you. Applicants understood that the reasons for the indication of allowable subject matter given by the Patent Office were made in accordance with the following instruction per MPEP § 1302.14:

> "The statement is not intended to necessarily state all the reasons for allowance or all the details why claims are allowed and should not be written to specifically or impliedly state that all the reasons for allowance are set forth."

CONCLUSION

The application is respectfully submitted to be in condition for allowance. Accordingly, notification to that effect is earnestly solicited. In the event that issues arise in the application that may readily be resolved via telephone, the Examiner is kindly invited to contact the undersigned Attorney at (402) 496-0300.

Respectfully submitted,

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